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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 109

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,

v.

NATIONAL INDUSTRIAL ALCOHOL COMPANY, INC.

BRIEF FOR RESPONDENT IN OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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Dated, May 24, 1930.

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CITATIONS.

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Renziehausen v. Lucas, 280 U. S. 387 ..... 3, 4, 5

Statutes:

Revenue Act of 1918, sec. 234 (a) (4) and (a) (7), c. 18, 40 Stat. 1057, 1077, 1078 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 887.

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,

v.

NATIONAL INDUSTRIAL ALCOHOL COMPANY, INC.

BRIEF FOR RESPONDENT IN OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OPINION BELOW.

The opinion of the Court of Appeals of the District of Columbia (R. 35) is reported at 38 Fed. (2nd) 718. The findings of fact and opinion of the United States Board of Tax Appeals (R. 11-15) are reported in 7 B. T. A. 1241.

QUESTION PRESENTED.

The sole question presented by petitioner in his petition for a writ of certiorari is whether the depreciated cost of tangible property which is abandoned constitutes an allowable deduction from respondent's income either as a loss under Section 234 (a) (4) or as obsolescence under Section 234 (a) (7) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1077, 1078.

STATUTE INVOLVED.

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1077, 1078:

> SEC. 234 (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:
>
> * * * *
>
> (4) Losses sustained during the taxable year and not compensated for by insurance or otherwise.
>
> * * * *
>
> (7) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence.
>
> * * * *

STATEMENT.

Respondent accepts as correct the statement contained in the petition for certiorari.

ARGUMENT.

Respondent concedes that prior to November 3, 1919, it was engaged in the manufacture and sale of beer, and furthermore concedes that after that date it was compelled to cease the manufacture of beer because of

National Prohibition. The loss claimed by respondent represents depreciated cost of two floors of its cellar building abandoned on November 3, 1919, and having no value to respondent thereafter. In the proceeding before the Court of Appeals of the District of Columbia, respondent elected to have its rights determined under Section 234 (a) (4) of the Revenue Act of 1918, and claimed the loss as a deduction in the year of abandonment (R. 41). Petitioner, citing the decisions of this Court in Clarke v. Haberle Crystal Springs Brewing Company, 280 U. S. 384, and Renziehausen v. Lucas, 280 U. S. 387, submits that the ruling of this Court in those cases is equally applicable to deductions claimed because of the abandonment of tangible property used in a brewery business rendered illegal by the Eighteenth Amendment to the Constitution. Respondent respectfully submits that the principle in those two decisions is not controlling in this case.

In the case of Clarke v. Haberle Crystal Springs Brewing Company, *supra*, the question for decision involved the right of Haberle Crystal Springs Brewing Company to deduct as obsolescence under Section 234 (a) (7) of the Revenue Act of 1918 its good will or going concern value, such loss to be spread over the period from the date on which Prohibition became a reasonable certainty until January, 1920, the effective date of Constitutional Prohibition, rather than to be taken in the year in which the asset became obsolete. In the instant case respondent claims as a loss in the year of abandonment the depreciated cost of tangible property abandoned by respondent because of a lack of useful value after the effective date of Prohibition. The nature of such loss is the same as that resulting from the sale of property for less than its depreciated

cost, such a loss likewise being governed by Section 234 (a) (4) of the Revenue Act of 1918. Had the property been sold, surely the principle laid down by this court in Clarke v. Haberle Crystal Springs Brewing Company, *supra*, would not have prevented a deduction from income of the excess of depreciated cost over the sale price.

In the case of Renziehausen v. Lucas, *supra*, the record shows that Renziehausen continued to manufacture whiskey for medicinal purposes until November, 1921, at which time he failed to obtain a permit under the Willis-Campbell Act prohibiting such manufacture for medicinal purposes except under permit from the Commissioner of Internal Revenue. The Board of Tax Appeals disallowed Renziehausen's claim for deductions as obsolescence under Section 234 (a) (7) of the value of his good will and tangible property spread over the years 1918 to 1921, inclusive, but allowed him as a deduction in 1921 under Section 234 (a) (4) of the Act a loss on account of the abandonment of tangible property. The Circuit Court of Appeals affirmed the decision of the Board on all points. In Renziehausen's appeal before this Court he asked for a reversal of the decision of the Circuit Court of Appeals, and the allowance of the loss on abandonment of tangible property as obsolescence to be spread over the years 1918 to 1921, inclusive, instead of as a deduction in 1921, the year of obsoleteness. This Court denied appellant's contention for deductions in 1918, 1919 and 1920 on account of the obsolescence of his tangible properties, but did not disturb the allowance as a deduction in 1921 of the loss on account of the obsoleteness of those same properties. On the contrary, this Court in its decision said:

"The petitioner has no reason to complain of the allowance for obsolescence of the warehouses."

CONCLUSION.

The Commissioner of Internal Revenue needs no decision of this Court to determine the proper course to be followed in pending cases involving the same question as the instant case.

Section 234 (a) (4) of the Revenue Act of 1918 clearly permits the deduction of a loss sustained on the abandonment of property, irrespective of the circumstances from which the loss flows. Moreover, this Court in the case of Renziehausen v. Lucas, *supra*, has affirmed the decision of the Lower Court permitting a deduction under Section 234 (a) (4) on account of the obsoleteness and abandonment of physical property, thereby establishing a rule for the guidance of the Commissioner of Internal Revenue.

Respectfully submitted,

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Dated, May 24, 1930.